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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|---|-------------|----------------------|---------------------|------------------|
| 09/437,111 | 10/16/2001 | AKITSUGA NINJOUJI | SUD-002-USA- | 7535 |
| 27955 | 7590 | 03/07/2006 | EXAMINER | |
| TOWNSEND & BANTA c/o PORTFOLIO IP PO BOX 52050 MINNEAPOLIS, MN 55402 | | | KUHN, SARAH LOUISE | |
| | | | ART UNIT | PAPER NUMBER |
| | | | 1761 | |

DATE MAILED: 03/07/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/437,111

Applicant(s)

NINJOUJI ET AL.

Examiner

Sarah L. Kuhns

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 14 March 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1 and 7-16 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1 and 7-16 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claim Rejections - 35 USC § 112

Claims 1 and 7-16 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. It is unclear what is considered to be “one moment.” It is also unclear as to where the yeast in the turbid liquid filtrate comes from. Further, claim 1 includes a step of “separating a clear liquid filtrate from another part of said low alcoholic unrefined sake” and it is not clear what part this is referring to. Lastly, the use of parentheticals should be avoided.

Claim Rejections - 35 USC § 102

Claims 1 and 8-16 are rejected under 35 U.S.C. 102(b) as being anticipated by Ninchiyouji, JP 10295356 A. A machine translation of the document has been included with this Office Action. Additionally, an official translation has been requested and will be forwarded to Applicant when received. This rejection is under 35 U.S.C. 102(b) because while the priority date of December 29, 1998 is acknowledged, no English translation of the priority document has been received. Once a translation is submitted the rejection will become one under 35 U.S.C. 102(a).

In regard to claims 1 and 13, Ninchiyouji discloses a method of producing sparkling low alcohol content sake comprising the steps of saccharifying and fermenting steamed rice and malted rice under the conditions that acidity exceeds 3.5 for at least one moment in the process during a stage of unrefined sake wherein acidity is a titratable amount with 0.1 N NaOH needed to neutralize 10 mL of Japanese sake; filtering a part of the unrefined sake with a filtering material having a coarse mesh to obtain a turbid liquid containing yeasts and having a fermenting activity and compressing another part of the unrefined sake to separate a clear liquid, mixing the turbid liquid with the clear liquid and putting into a bottle, and stopping the fermentation at the time when the gas pressure attains 2-5 kg/cm² caused by the fermentation inside the sealed vessel (abstract).

In regard to claim 8, Ninchiyouji discloses the claimed blending ratio (paragraph 10).

In regard to claim 9-11, Ninchiyouji discloses the fermentation being carried out at 6-10°C and for a period of time between 5 days and 2 weeks (paragraph 10).

In regard to claim 12, it is notoriously well known that koji breaks down the rice starch to produce acids, such as lactic acids. Therefore, the process of Ninchiyouji is inherently carried out in the presence of lactic acid.

In regard to claims 14 and 15, Ninchiyouji discloses pasteurization being conducted when the liquid therein reaches an alcoholic content of 4-6% by volume, Japanese sake scaling of between -70 and -90, and an acidity of 3-4.

In regard to claim 16, the machine translation relates to "fizz" low alcoholic sake, which the Examiner interprets to mean carbonated sake.

Claim Rejections - 35 USC § 103

Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over Ninchiyouji, as applied above. While it appears from the machine translation that the absorbency at 600 nm of Ninchiyouji is between 0.2 and 2, which is higher than that claimed, it is not seen how the absorbency claimed results in an unexpected result.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Sarah L. Kuhns whose telephone number is 571-272-

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1088. The examiner can normally be reached on Monday - Friday from 8:00 am - 4:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached at 571-272-1398. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

SLK



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